
C O U N C I L C O M M U N I C A T I O N

TO: THE CITY COUNCIL
FROM: THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE
SEPTEMBER 7, 1988

SUBJECT: LODI MUNICIPAL CODE § 10.44.040 (FOR SALE **SIGNS** ON VEHICLES)

PREPARED BY: City Attorney

BACKGROUND INFORMATION:

Attached is a copy of Judge Seibly's decision dated August 8, 1988 in the matter of People v. Walton, Case No. 139671. In this ruling, the Judge declares LMC § 10.20.070 (later amended and re-codified as LMC § 10.44.040) as it pertains to the parking of vehicles on a public roadway for the "purpose of displaying such vehicle ... for safe..." to be an unconstitutional regulation of commercial speech.

The Court relied heavily upon People v. Moon (1978) 89 Cal. App. 3d Supp. 1; 152 Cal. Rptr. 704 in which an ordinance of the City of Berkeley, remarkably similar to Lodi's ordinance, was likewise declared to be an unconstitutional infringement upon freedom of speech. While it is noted that People v. Moon was decided by an appellate panel of the Alameda County Superior Court, and thus has no binding precedential value, and while I do not necessarily agree with the reasoning in either People v. Moon or Judge Seibly's decision, I believe it is indicative of the thinking of appellate courts, and would be given some weight if the City chose to appeal.

It appears that the City has three options: First, to simply accept Judge Seibly's ruling and take no further action, thereby allowing "For Sale" signs to be placed in vehicles upon City streets. Second, **the** Council may direct that a **new** ordinance be drafted, taking into account the constitutional infirmities found by the Court. Third, we could appeal Judge Seibly's decision to the Appellate Division of San Joaquin County Superior Court, as was done in People v. Moon.

If the first option is chosen by the Council, no further action would be required. However, I have received a few phone calls from people who were concerned that having an invalid ordinance and not putting something in its place would result in a proliferation of "For Sale" signs all over **town**, creating **an** eyesore.


If the Council decides that it **is** more appropriate to attempt to modify our ordinance, it is possible that a "time, place and manner" ordinance could be drawn, although I was unable to locate any case in which an ordinance such as this survived. This means we have no tried and true blueprint or model upon which to base **a** new ordinance.

Council Communication
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If the decision is made to appeal Judge Seibly's ruling, it would have to be done in the near future, since our *time* for notifying the Court of our intent to appeal commenced to run on **August 29, 1988** when the City received a copy of the Judge's **decision** for the first time. It does not appear likely, based on the somewhat inconclusive law now available, that a appeal would be successful.

Council direction is requested.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Bob McNatt", with a horizontal line extending to the right.

Bob McNatt
City Attorney

BM:vc

attachment

VEHICLES.ALE/TXTA.01V

AUG. 29 '88

City Attorney's Office

MUNICIPAL COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
LODI JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA)

Plaintiff(s))

Case No. 139671

LODI MUNICIPAL CODE SECTION 10-20-070

) D E C I S I O N

vs

GENE G. WALTON

Defendant(s))

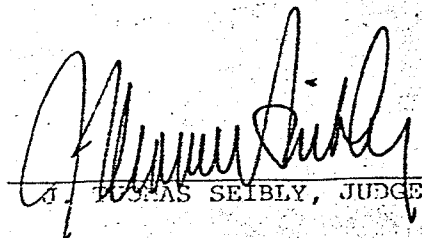
The Defendant has previously appeared before the Court, admitted that the automobile in question was his and that it was parked at its location with intent to display it for sale -- the Defendant however has argued that Ordinance 1381, Lodi Municipal Code, Section 10-20-070 be declared unconstitutional.

The Court has studied the briefs of the parties, the cited cases and attached exhibits. The Court renders the following decision: That Lodi Municipal Code, Section 10-20-070 does impair "the flow of truthful and legitimate commercial information: and does not reach the threshold of constitutionality under the United States Supreme Court test. The ordinance is an unconstitutional regulation of commercial speech.

This ordinance is even more restrictive under its prima facie evidence clause than was the similiar ordinance declared unconst-

1 itutional by the Alameda Superior Court, Appellate Department in
2 People vs Moon, (1978) 89CA3d Supp.1,152 Cal. Rptr.704, under which
3 ordinance an owner was not prohibited from advertising a vehicle on
4 the public street so long as "the advertising was not the primary
5 purpose for which the vehicle was parked there."
6 While there is no question that the aesthetics and traffic manage-
7 ment are two significant Municipal interests of the City of Lodi--
8 barring all vehicles upon which there are "For Sale" signs is a
9 meat cleaver approach where a knife is required. It is over-broad
10 in banning even those "For Sale" signs which are in no way a threat
11 to Municipal charm nor a danger to the free and proper flow of
12 traffic.
13 The only question before this Court is the constitutionality of
14 this ordinance. This holding is not that any ordinance regulating
15 the sale of vehicles on city streets or private property is per se
16 unconstitutional. Numerous constitutional ordinances exist or may
17 be drawn.
18 This citation is dismissed.

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25 August 9, 1988


J. THOMAS SEIBLY, JUDGE